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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/030,038	05/20/2002	Burkhard Mueller	H 3799 PCT/US	8946

423 7590 02/24/2004

HENKEL CORPORATION
THE TRIAD, SUITE 200
2200 RENAISSANCE BLVD.
GULPH MILLS, PA 19406

EXAMINER

ELHILO, EISA B

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 02/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/030,038

Applicant(s)

MUELLER ET AL.

Examiner

Eisa B Elhilo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5/20/02
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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Claims 10-30 are pending in this application.

Response to Arguments

1 This action is responsive to the supplemental preliminary amendment filed on 5/20/2002.

Claim Rejections - 35 USC § 103

2 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10-18 and 20-23, 25-28 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greiche et al. (US 4,859,459).

Greiche (US' 459) teaches a method of shaping human hair which comprises the steps of applying to the hair a hair shaping composition comprising a keratin-softening reducing agent, allowing the hair shaping composition to act for a period of time, rinsing the shaping composition from the hair with water and applying to the hair a fixing composition which comprises an oxidizing agent as claimed in claim 10 (see col. 3, lines 24-38), wherein the applied composition is used in an emulsion form (two layers) as claimed (see col. 4, line 57-58). The process further comprises applying a hair shaping composition that comprises alcohols having 7 carbon atoms such as benzyl alcohol (see col. 6, line 32), paraffin oil as claimed in claims 11 and 12 (see col. 5, line 2), alcohol having limited miscibility with water that comprises a diol such as glycerine as claimed in claims 13, 14 and 15 (see col. 5, line 11). Greiche also teaches a keratin fiber reducing composition comprising a reducing agent (see col. 3, line 40), benzyl alcohol (see col. 6, line 32), paraffin oil as claimed in claims 17-18 (see col. 5, line 2) and hair conditioning

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components as claimed in claim 20 (see col. 5, line 12-13). Greiche further teaches a keratin fiber fixing composition comprising an oxidizing agent (see col. 4, lines 56-57), alcohols such as glycerine (1,2-dihydroxypropane) (see col. 5, line 11), paraffin oil as claimed in claim 23 (see col. 5, line 2). Greiche furthermore, teaches a composition for rinsing keratin fibers comprising the hair treating ingredients as described above and as claimed in claims 26-28 and 30.

The instant claims differ from the reference in that Greiche does not require a composition for treating keratin fibers that contains at least one alcohol having 4 to 10 carbon atoms and having only limited miscibility with water, as required in the instant claims.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to be motivated to modify the claimed method and treating compositions by incorporating the claimed fatty alcohol having 4 to 10 carbon atoms in the treating compositions as claimed. Such modification would be obvious because the reference teaches a diol alcohol having 3 carbon atoms (1,2-dihydroxy propane) (glycerine) (see col. 5, line 11), wherein the difference between the number of the carbon atoms of alcohols of the prior art and the claims are close enough to constitute an obviousness rejection. If ranges of the prior art and claimed ranges do not overlap, obviousness rejection may still exist if the ranges are close enough that one would not expect a difference in properties, *In re Woodruff* 16 USPQ 2d 1034 (Fed. Cir. 1990); *Titanium Metals Corp. V. Banner* 227 USPQ 773 (Fed. Cir. 1985); *In re Aller* 105 USPQ 233 (CCPA 1955). Furthermore, applicants have not shown on record the criticality of their compositions as compared to those compositions in which the miscible alcohols having less than 4 carbon atoms or greater than 10 carbon atoms as taught by the reference and which are used for

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the same purpose, and, thus, a person of an ordinary skill in the art would expect such a composition to have similar properties to those claimed, absent unexpected results.

3 Claims 19, 24 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greiche et al. (US 4,859,459) in view of Cannell et al. (US 5,681,554).

The disclosure of Greiche (US' 459) is summarized above. Greiche does not teach or disclose a composition comprising protein hydrolyzate as claimed.

Cannell (US' 554) in an analogous art of hair treating composition teaches a composition comprising hydrolyzed protein as claimed (see col. 1, line 52-53).

Therefore, in view of teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the composition of the primary reference by incorporating the hydrolyzed protein to make such a composition. Such modification would be obvious because the secondary reference of Cannell clearly teaches that the composition containing a hydrolyzed protein when applied to the hair, reduces hair damage and protein loss caused by grooming, excessive heat, chlorinated water, ultraviolet light from the sun and reactive chemicals and further, enhances the protective efficacy of the compositions (see col. 1, lines 55-62), and, thus, a person of ordinary skill would be motivated to incorporate the hydrolyzed protein as taught by Canell in the composition of Greiche with a reasonable expectation of success to reduce the hair damage and to enhance the protective efficacy of the compositions, and, thus, would expect such a composition to have similar properties to those claimed, absent, unexpected results.

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Conclusion

4 The references listed on from 1449 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the rejection above.

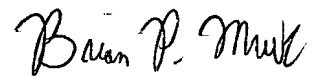
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo
February 16, 2004



Brian P. Mruk
BRIAN P. MRUK
PRIMARY EXAMINER
TECH CENTER 1700